

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LAURA DERMER,

11 Plaintiff,

v.

12 SALTWORKS, INC., *et al.*,

13 Defendants.

14 CASE NO. C23-0443-JCC

ORDER

15 This matter comes before the Court on Plaintiff's motion to compel (Dkt. No. 30).
16 Having thoroughly considered the briefing and the relevant record, the Court GRANTS the
17 motion in part for the reasons explained herein.

18 In this employment discrimination case, Plaintiff asserts disparate treatment, sexual
19 harassment, retaliation, and hostile work environment (amongst other claims). (*See generally*
20 Dkt. No. 1.) Trial is scheduled for July 5, 2024. (*See* Dkt. No. 22.) The Court initially set the
21 discovery cut-off for January 22, 2024, but extended it to April 18, 2024, based on the parties'
22 stipulation. (*See* Dkt. No. 33.) Presently at issue is Defendants' response to certain requests for
23 production ("RFP") and interrogatories. (*See generally* Dkt. No. 30.) Plaintiff contends the
24 response, to date, is inadequate and untimely. (*Id.*) She asks the Court to compel Defendants to
25 adequately supplement. (*Id.*) In addition, Plaintiff asks for attorney fees and sanctions, but she
26 does not suggest what form the sanctions should take. (*Id.*)

“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). Following a meet and confer, the requesting party may move for an order compelling such discovery. Fed. R. Civ. P. 37(a)(1); LCR 37(a)(1). If a party fails to comply with a discovery order, the district court may also sanction that party accordingly. Fed. R. Civ. P. 37(b)(2). The Court has broad discretion to decide whether to compel disclosure of discovery. *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

Plaintiff contends Defendants have (1) provided inadequate production and incomplete responses to interrogatories and (2) missed agreed-to supplementation deadlines—repeatedly. (*See generally* Dkt. No. 30.) Upon review of Defendants’ initial and supplemental responses, (Dkt. No. 31-3, 31-4, 37-1), the Court must agree.¹ And Defendants do not meaningfully challenge this assertion, other than in the instances discussed below. (*See generally* Dkt. No. 35.)

RFPs 8 and 12

RFPs 8 and 12 seek certain personal communications between Defendant Mark Zoske and Saltworks employees. (*See* Dkt. No. 31-1 at 13, 15.) Defendants have excluded from this production communications between Mr. Zoske and two former employees: his now ex-wife, Naomi Novotny, and his now ex-girlfriend, Sarah Dean. (Dkt. No. 35 at 6–8.)

As for Ms. Novotny, Defendants argue the marital communication privilege applies, and that any communication following marriage would be irrelevant, as it occurred after termination of her Saltworks employment. (*Id.* at 6–7) (citing *U.S. v. Montgomery*, 384 F.3d 1050, 1056 (9th Cir. 2004)). The Court agrees. The party seeking to pierce the marital communication privilege bears the burden of establishing that such communications were not intended to be confidential. See, e.g., *Perez v. Sauson*, 2016 WL 10587197, slip op. at 2 (E.D. Wash. 2016). Plaintiff has not

¹ The parties' formal and informal written communications strongly support this conclusion. (See Dkt. Nos. 31-5, 31-6, 31-8, 31-9, 31-10, 31-11, 31-12, 31-13, 31-14, 31-15, 31-16, 31-17, 31-18, 31-19.) This is further supported by Defendants' admission that timely production of certain records did not occur "due to an internal miscommunication." (*Id.* at 9.)

made this showing. Nor has she demonstrated the relevance of Mr. Zoske's communications with his ex-wife *following* her Saltworks employment.

As for Ms. Dean, she and Defendants contend the relationship was consensual, making any communications between the two irrelevant to Plaintiff's claims. (*See* Dkt. No. 35 at 7–8) (citing Dkt. No. 36 at 1–3). Here, the Court must disagree. By Defendants' admission, Ms. Dean engaged in a romantic relationship with Mr. Zoske while employed at Saltworks. (*Id.*) This is relevant to the allegations in the complaint, namely that Mr. Zoske pressured Plaintiff into engaging in a similar relationship. (*See generally* Dkt. No. 1.) Moreover, Ms. Dean is alleged to have contributed to the hostile work environment orchestrated by Mr. Zoske, once Plaintiff rebuffed his advances. (*See id.* at 15–16.) Therefore, their communications are, indeed, highly relevant to Plaintiff's claims.

RFP 10

RFP 10 seeks Mr. Zoske’s financial records from April 1, 2019 through April 1, 2023. (Dkt. No. 31-1 at 14.) Defendants contend this RFP is unduly burdensome; overly broad; not reasonably limited in time, form or scope; and disproportional to the needs of the case. (Dkt. No. 35 at 8–9.) Again, the Court disagrees. According to the complaint, Mr. Zoske plied Plaintiff with gifts in expectation of a romantic relationship. (*See generally* Dkt. No. 1.) Mr. Zoske, dissatisfied with Plaintiff’s failure to reciprocate, retaliated through various adverse workplace actions. (*Id.*) Given these allegations, Mr. Zoske’s gifts to Plaintiff and other Saltworks employees are relevant. His financial records provide insight into this. In addition, the Court finds the sought-after production proportional to the needs of this case. And while it may be burdensome, it is not undue, given the complaint’s allegations. *Jackson v. Montgomery Ward & Co., Inc.*, 173 F.R.D. 524, 529 (D. Nev. 1997) (“[J]ust because complying with a discovery request will involve expense or may be time consuming, [it] does not make it unduly burdensome.”).

Finally, the Court finds Plaintiff is entitled to reasonable attorney fees and expenses

1 incurred in filing the motion to compel. *See* Fed. R. Civ. P. 37(a)(5)(A).² To support such an
2 award, she may present the Court with an accounting of her attorney fees and expenses,³ along
3 with argument not to exceed four pages supporting additional sanctions, within seven days of
4 this order. Defendants' objection to Plaintiff's submission, also not to exceed four pages, is due
5 within seven days of service. The Court will not entertain a reply from Plaintiff.

6 To summarize, Plaintiff's motion to compel is GRANTED in part. Defendants are
7 ORDERED to provide final supplementation of their responses for all outstanding RFPs and
8 interrogatories within fourteen (14) days of this order, *excluding* those seeking communications
9 between Mr. Zoske and Ms. Novotny.

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11 DATED this 9th day of February 2024.

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John C. Coughenour

16 UNITED STATES DISTRICT JUDGE

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2 "If the motion is granted—or if the disclosure or requested discovery is provided after
the motion was filed—the court must, after giving an opportunity to be heard, require the party
or deponent whose conduct necessitated the motion, the party or attorney advising that conduct,
or both to pay the movant's reasonable expenses incurred in making the motion, including
attorney's fees." Fed. R. Civ. P. 37(a)(5)(A).

3 Those fees and expenses should not include the cost of the meet and confers and other
informal follow-ups described in Plaintiff's motion.